

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TENNESSEE CLEAN WATER NETWORK,
and TENNESSEE SCENIC RIVERS
ASSOCIATION,
Plaintiffs,

v.

TENNESSEE VALLEY AUTHORITY,
Defendant.

No. 3:15-cv-00424
Judge Haynes
Magistrate Judge Holmes

TVA'S MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' CLAIM B

Pursuant to Federal Rule of Civil Procedure 56 and in accordance with Local Rules 7.01 and 56.01, Defendant Tennessee Valley Authority (“TVA”) moves the Court for Summary Judgment on Plaintiffs’ Claim B alleging that TVA’s operation of the Ash Pond Complex at Gallatin Fossil Plant violates the Clean Water Act (“CWA”) because it constitutes the “improper use of Sinking Creek, a Water of the United States, as a Wastewater Treatment Facility.” (Compl., Doc. 1 at PageID 43-46).

TVA is entitled to summary judgment on Plaintiff’s Claim B because the undisputed material facts show that (1) the Ash Pond Complex was not constructed within the navigable waters of the United States; and even if it were, (2) the construction of the Ash Pond Complex was authorized by the United States Army Corps of Engineers (“Corps”) under its traditional jurisdiction over navigable waters of the United States and under the Corps’ CWA regulatory jurisdiction, and (3) the EPA’s NPDES regulations show that, as a matter of law, the Ash Pond Complex is not a “water of the United States” under the CWA.¹

¹ TVA’s also has moved to dismiss Claim B (Doc. 12) as an impermissible collateral attack on the Gallatin NPDES permit. (Doc. 13 at PageID 266-70.)

As required by Local Rule 56.01, this motion is accompanied by a separate statement of the material facts as to which TVA contends there is no genuine issue for trial and a separate brief in support hereof.

Respectfully submitted,

*s/*David D. Ayliffe

Edwin W. Small (BPR 012347)

Deputy General Counsel

Maria V. Gillen (BPR 030655)

David D. Ayliffe (BPR 024297)

TVA GENERAL COUNSEL'S OFFICE

400 West Summit Hill Drive

Knoxville, Tennessee 37902-1401

Telephone 865.632.8964

ddayliffe@tva.gov

Attorneys for Tennessee Valley Authority

36439257

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically through the Court's ECF system on the date shown in the document's ECF footer. Notice of this filing will be sent by operation of the Court's ECF system to all parties as indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system.

*s/*David D. Ayliffe

Attorney for Tennessee Valley Authority